

James R. Dickens  
MILLER NASH LLP  
4400 Two Union Square  
601 Union Street  
Seattle WA 98101-2352  
Telephone: (206) 622-8484

Hon. Ralph R. Beistline

Peter Gruenstein  
GRUENSTEIN & HICKEY  
Resolution Plaza  
1029 W. 3<sup>rd</sup> Avenue, Suite 510  
Anchorage AK 99501  
Telephone: (907) 258-4338

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

v.

FRED MEYER STORES, INC., a Delaware  
corporation; and JAIME SAN MIGUEL,

Defendants.

Case No. 1J-04-008-CV (RRB)

MILLER NASH LLP  
ATTORNEYS AT LAW  
4400 TWO UNION SQUARE  
601 UNION STREET, SEATTLE WA 98101-2352  
TELEPHONE (206) 622-8484

**DECLARATION OF JAMES R. DICKENS (11/22/06)**

I, James R. Dickens, declare under oath as follows:

1. I am counsel for defendant Fred Meyer Stores, Inc. and Jaime San Miguel. I make this declaration in opposition to plaintiff's second motion to reopen discovery.

2. Attached hereto as Exhibit A are excerpts from the deposition testimony of Johnna Havard taken on January 25, 2006, by plaintiff's counsel. They include pages 60 and 61 to her deposition testimony.

3. Attached hereto as Exhibit B are excerpts from the deposition testimony of Ken Haverkost taken May 25, 2006. They include pages 45 and 46.

DECLARATION OF JAMES R. DICKENS  
Johnson v. Fred Meyer  
Case No. 1J-04-008-CV  
Page 1 of 3

SEADOCS:256096.1

MILLER NASH LLP  
ATTORNEYS AT LAW  
4400 TWO UNION SQUARE  
601 UNION STREET, SEATTLE WA 98101-2352  
TELEPHONE (206) 622-8484

4. Attached hereto as Exhibit C are excerpts from the deposition testimony of Jaime San Miguel taken by plaintiff's counsel January 24, 2006. They include pages 215-16.

5. I have reviewed the 16 handwritten pages of notes confirmed by Mary Lucas Hill to be made by her in her deposition on October 25, 2006. There is no reference in any of those handwritten notes to any "last and final warning," or "first, last and final warning" to Jaime San Miguel.

6. I reviewed the first, second and third sets of requests for production of documents from plaintiff to defendant Fred Meyer. In the first RFP, No. 8, plaintiff asks for 19 "complete personnel files," and defendant produced those for plaintiff Myrna Johnson, Johnna Havard and defendant Jaime San Miguel and the employee setup documents for the other people noted but not the personnel files because of the overly broad scope, sensitivity and lack of relevance. There was never any specific discovery request from plaintiff to defendant Fred Meyer seeking documents concerning any alleged "discipline" of Fred Sayre in 2002 and 2003. The only such specific request was regarding Mr. San Miguel in plaintiff's third set of requests, No. 25, to which defendant Fred Meyer produced document nos. 202414-20438G and which were part of the exhibit used by plaintiff's counsel to examine Ms. Lucas-Hill on October 25, 2006.

7. Attached hereto as Exhibit D is the October 18, 2006, Notice of Deposition of Jaime San Miguel for November 2, 2006.

8. Attached hereto as Exhibit E is the letter from plaintiff's counsel postponing the previously set deposition of Mr. San Miguel.

9. Attached hereto as Exhibit F is a copy of my letter to plaintiff's counsel regarding the cancellation of Mr. San Miguel's deposition and the non-refundable travel arrangements (the airfare was \$1000).

10. Attached hereto as Exhibit G is my e-mail message to plaintiff's counsel explaining that there never had been a last and final warning issued to Mr. San Miguel by Fred Meyer in January 2003, and that on this point Mary Lucas Hill simply was mistaken.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNED at Seattle, Washington, on November 22, 2006.

s/ James R. Dickens  
James R. Dickens

Certificate of Service

I hereby certify that on November 22, 2006,  
a copy of the foregoing was served  
electronically on:

Mark Choate  
lawyers@choatelawfirm.com

s/ James R. Dickens

MILLER NASH LLP  
ATTORNEYS AT LAW  
4400 TWO UNION SQUARE  
601 UNION STREET, SEATTLE WA 98101-2352  
TELEPHONE (206) 622-8484